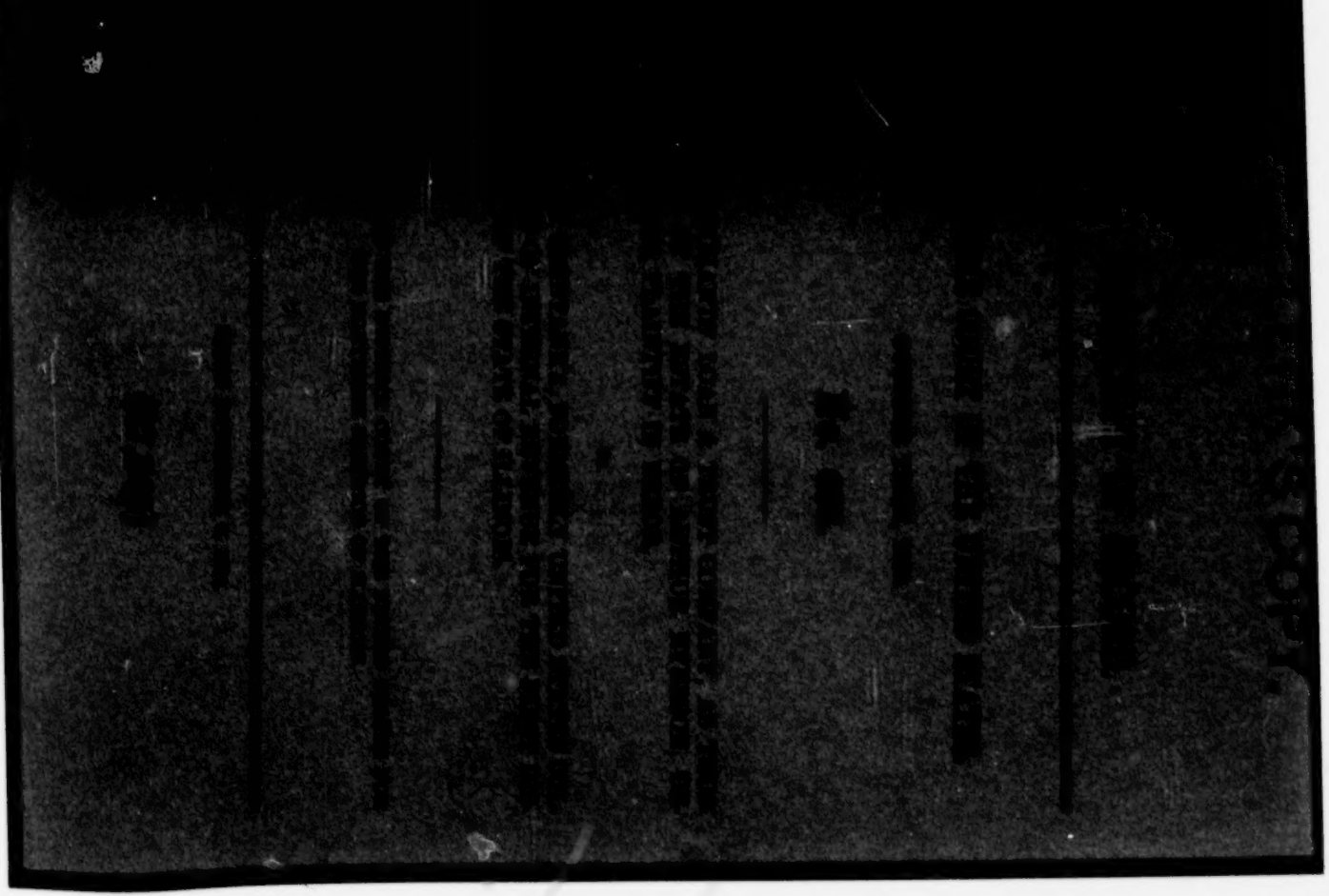

(27,965)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 608.

THE MERCHANTS' LOAN & TRUST COMPANY, AS TRUSTEE OF THE ESTATE OF ARTHUR RYERSON, DECEASED, PLAINTIFF IN ERROR,

vs.

JULIUS F. SMIETANKA, FORMERLY UNITED STATES COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF THE STATE OF ILLINOIS.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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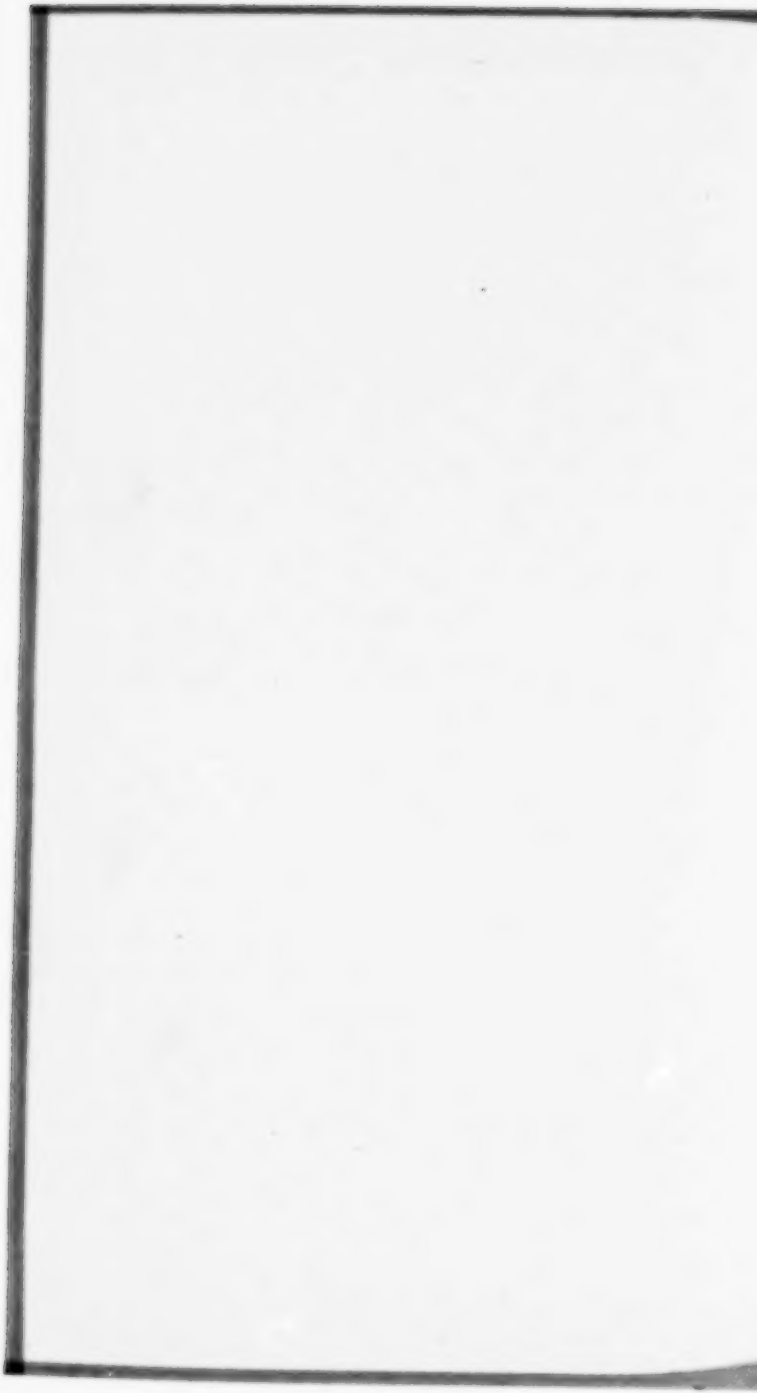
JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 29, 1920.



1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Rooms, in the City of Chicago, in said District and Division, before the Honorable George T. Page, United States Circuit Judge for the 7th Judicial Circuit, holding United States Court for the Northern District of Illinois by assignment, on 22nd day of October, in the year of our Lord one thousand nine hundred and 20, being one of the days of the regular October Term of said Court, begun Monday, the 4th day of October, 1920, and of our Independence the 145th year.

Present: Honorable George T. Page, Circuit Judge. John J. Bradley, U. S. Marshal. John H. R. Jamar, Clerk.

2 And on to-wit: the 24th day of June, 1920, came Attorneys for the Plaintiff and filed in the Clerk's office of said Court, in said entitled cause, a certain Amended Declaration in words and figures following, to-wit:

3 In the District Court of the United States, Northern District of Illinois, Eastern Division, June Term, A. D. 1920.

No. 33297—5/7/20.

THE MERCHANTS' LOAN & TRUST COMPANY, as Trustee of the Estate of Arthur Ryerson, Deceased, Plaintiff,

v.

JULIUS F. SMIETANKA, Formerly United States Collector of Internal Revenue for the First District of the State of Illinois, Defendant.

The Merchants' Loan & Trust Company, as Trustee of the Estate of Arthur Ryerson, deceased, by Fisher, Boyden, Kales & Bell, its attorneys, files herewith its declaration amendatory to the declaration filed by it in the above entitled cause on May 7, 1920, and complains of Julius F. Smietanka, formerly United States Collector of Internal Revenue for the First District of the State of Illinois, defendant, of a plea of trespass on the case on promises.

For that Whereas, the plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and is a citizen of the United States and State of Illinois and maintains its principal place of business in the City of Chicago, in the State of Illinois, and in the First Internal Revenue District of the State of Illinois;

That the defendant, at the times more specifically hereinafter mentioned, was and now is a resident of the City of Chicago, in the State of Illinois, and in the Northern District and Eastern Division

thereof, and was at the times more specifically hereinafter
4 mentioned and thereafter, to-wit, until his resignation from said office on or about February 1, 1920, the duly appointed and qualified United States Collector of Internal Revenue for the First District of the State of Illinois.

That Arthur Ryerson died testate on the fifteenth day of April, A. D. 1912, a citizen of the United States and of the State of Illinois, a resident of the City of Chicago, in the County of Cook in the State of Illinois and First Collection District of Illinois.

That the said last will and testament of said Arthur Ryerson was thereafter, to-wit, on the thirteenth day of April, 1912, duly admitted to probate in the Probate Court of Cook County, Illinois, and was in words and figures as follows:

Last Will and Testament of Arthur Ryerson.

I, Arthur Ryerson, of Chicago, in the County of Cook and State of Illinois, do hereby make and publish this my last will and testament, hereby revoking all former wills and codicils by me made.

(1) I give and devise to my beloved wife, Emily Borie Ryerson all of my real estate in Otsego County, New York, and the improvements thereon.

(2) I give and bequeath to my said wife all my books, pictures, plate and other household effects and furniture of every kind, and also all my horses, carriages and the appurtenances thereto.

(3) I give, devise and bequeath all the rest, residue and remainder of my property, both real and personal, of every sort and description whatsoever, to my said wife, Emily Borie Ryerson and to my brother, Edward L. Ryerson, of Chicago, Illinois, or to the survivor of them, as Trustees or Trustee, in trust to hold and manage the same, and to pay over to my said wife, at such times as she may wish, the whole of the net income thereon, or so much of said net income as she shall from time to time request, so long as she shall live. Upon the death of my said wife, if she shall survive me, or, upon and after my death, if she shall not survive me, it is my will that my trustees shall
5 pay and convey absolutely to each of my children a one-fifth portion of said trust estate, provided that no child shall receive his or her portion before reaching the age of twenty-five years, and until that time the portion of each of said children shall remain in the trust hereby created and my trustees shall hold and manage said trust estate (or so much thereof as shall not have been paid and conveyed to my children and their issue absolutely, as hereinabove and hereinafter provided), expending the net income of said trust estate, or so much of said net income as my trustees shall deem necessary or proper, for the support, maintenance and education of such of my children as shall not have received the one-fifth portion of said trust estate to be paid and conveyed to them as hereinbefore provided. If any of such children shall die, leaving lawful issue, before the date on which he or she would have been entitled, had he or she lived, to

receive a one-fifth portion of my estate in accordance with the foregoing provisions, the one-fifth portion of said trust estate that would have been paid and conveyed to such child, as above provided, had he or she lived, shall, upon the death of such child, if such child shall die after the death of my said wife, or, upon the death of my said wife, if such child shall die before the date of my said wife's death, be paid and conveyed, in equal parts, to such issue living at the date of such payment and conveyance. If any of my children shall die, leaving no lawful issue, before the date on which he or she would have been entitled, had he or she lived, to receive a one-fifth portion of my estate in accordance with the foregoing provisions, the one-fifth portion of said trust estate that would have been paid and conveyed to such child, as above provided, had he or she lived, shall be held and managed by my trustees until my youngest surviving child shall reach the age of twenty-five years, when said portion of said estate shall be divided among my surviving children and their issue per stirpes; provided, however, that the trust estate hereby created shall in no event continue beyond the date of the death of the last survivor of the following persons, to-wit: my said wife and my said children now living, namely, Susan Parker Ryerson, Arthur Larned Ryerson, Emily Borie Ryerson, Ellen Ashfordby Ryerson and John Borie Ryerson.

Any part of the net income of said trust estate that shall not have been requested by and paid to my said wife, and that shall not be expended by my trustees for the support maintenance and education of my said children, shall be held, managed and distributed by my trustees as part of said trust estate.

(4) By the above directions to my trustees to hold, manage and distribute the trust estate hereby created, it is my intention and will to give to them, and I do hereby give them full power and authority to do all acts and to exercise the same discretion, and to execute and deliver deeds and other instruments of writing which they might do, exercise or execute, if they were the actual beneficial owners of the property held in trust; with full power to them in their discretion, among other things to sell, lease, encumber, rebuild, improve, repair, exchange, partition, convey, invest and reinvest (in real or personal property), to convert and reconvert (with full power to vary
6 securities) to and with such persons and for such prices and considerations and on such terms and conditions as my trustees shall determine, any property forming a part of said trust estate; to receive, buy and otherwise acquire and invest in real estate, and any interest in the same, bonds, debentures, shares of stock, trust certificates, receipts of trustees, mortgages, promissory notes, bills of exchange, securities of the United States Government or of any foreign government or of any State, County or city, or of any public or private corporation, and in any and all other forms of property, real, personal or mixed, that are not known or may hereafter be devised, whether such property be beyond the jurisdiction of any Court having charge of the trust estate created by this my will or not, and whether such property be such as courts of law have been wont

to sanction for the purpose of investment of trust funds, or such as the court having charge of said trust estate or any other court approves of or not; to employ agents, clerks, attorneys and other assistants in and about the execution of the trust hereby created, and to fix the compensation of such agents, clerks and attorneys and the price of all such assistance; to sue and defend in their own names as trustees, without the necessity of making any beneficiary a party to any suit instituted by or against my trustees; to compound, adjust and settle any claim affecting any property belonging to said trust estate, and it shall not be necessary to obtain from any court authority for or approval of any such settlement; to pay all expenses and charges properly incurred and charged in connection with said trust, including rates, taxes, assessments, insurance premiums and agents', clerks' and attorneys' compensation. My trustees are further hereby empowered in their discretion to lend or pledge any part of my estate so coming to their hands on such security as my trustees may deem sufficient; whether such security be real or personal property, and whether the lien securing such loan or pledge constitutes a first or second mortgage; to continue for any length of time that my trustees may deem proper such investments as may exist at the time of my death, and to change the character of investments at any time from realty to personalty and vice versa, and from one kind of realty or personalty to another kind of realty or personalty, respectively. No party paying any money or transferring any property other than money to my trustees shall be responsible for the proper application thereof.

The expression "my trustees" wherever used in this my will shall at any time be deemed to refer to and mean the trustees or trustee or successor hereunder for the time being qualified and capable of acting as such trustees or trustee under and in accordance with the provisions of this my will. My trustees shall be the final judges as to what net income is, and their determination in this respect shall bind all parties interested in my Estate, except that it is my will that stock dividends and accretions of selling values shall be considered principal and not income. Wherever, under the provisions of this my will, any division, conveyance or distribution of my estate shall become proper or necessary, I authorize my trustees to make such valuation, appointment, division and distribution as to them shall seem equitable, distributing any part of my Estate in kind or converting the same into money and distributing such money, as they, my trustees, shall see fit. Any exercise of discretion by my trustees under the provisions of this my will shall be final and conclusive upon all parties in interest under this my will. No one of my trustees shall be held responsible for any losses sustained by the trust estate except for such as shall approximately result from his or her own breach of good faith. The last survivor of the trustees above named may (but shall not be obligated so to do), by writing executed as wills are required by law to be executed in Illinois at the date of the execution of this will, appoint any other person to act as co-trustee with such surviving trustees under this my will, or any other person to act as successor in trust to such surviving trustee under

this my will, or may appoint both such co-trustee and such successor, and such appointments to take effect, respectively, upon the execution of such written appointments and upon the death of such survivor of the trustees hereinabove named; and the person or persons so appointed by said survivor shall have all the powers here above granted to my trustees hereinabove named.

(5) I hereby constitute and appoint my said wife, Emily Borie Ryerson, and my said brother Edward L. Ryerson, executrix and executor, respectively, of this my last will and testament, and request and direct that only their respective individual bonds be required of them as such executrix and executor, respectively, and that no bond whatever be required of them as trustees as aforesaid.

I hereby give to the persons above named in their capacity as executrix and executor, respectively, for the settlement of my Estate, as well as in their capacity as trustees, each and all of the powers hereinabove granted to them as trustees.

In testimony whereof, I have subscribed my name and set my seal to this my last will and testament this eleventh day of April, A. D. 1906.

ARTHUR RYERSON. [SEAL.]

The foregoing instrument was on this eleventh day of April, A. D. 1906, signed, sealed, published and declared by Arthur Ryerson, the testator above named, as and for his last will and testament in the presence of each of us, who in his presence and at his request, and in the presence of each other have hereunto subscribed our names as witnesses thereto.

Name, SIDNEY RICHMOND TABER,
Address, Lake Forest, Illinois.

Name, ALLEN G. MILLS,
Address, 765 Chase Ave., Chicago, Illinois.

Name, GUY A. MEEKER,
Address, 1 Wellington Place, Chicago, Illinois.

8 That Arthur Ryerson, deceased, left him surviving as his only heirs at law and next of kin the following named persons also named in said will, to-wit: Emily Borie Ryerson, his widow, Susan Parker Ryerson, now Susan Parker Ryerson Patterson, a daughter, now aged thirty years; Emily Borie Ryerson Clark, a daughter, now aged twenty-seven years; Ellen Ashfordby Ryerson, now Ellen Ashfordby Ryerson Salvatore, a daughter, now aged twenty-four years, and John Borie Ryerson, a son, now aged twenty-one years; that the said aforementioned heirs at law and next of kin of the said Arthur Ryerson are still living; that Arthur L. Ryerson, son of Arthur Ryerson, the decedent, and named in said last will, died on the eighth day of April, 1912, unmarried and leaving no children.

That on the twenty-eighth day of October, A. D. 1913, an order was duly entered by the Probate Court of Cook County in the matter

of the Estate of said Arthur Ryerson approving the final account of the executors thereof, declaring said estate settled and discharging the executors; that thereupon pursuant to the will of the said testator the entire net estate of said Arthur Ryerson was turned over, transferred and delivered to Emily Borie Ryerson and Edward L. Ryerson, as Trustee under the terms and conditions in said last will of said decedent set forth; that the above named Emily Borie Ryerson and Edward L. Ryerson thereupon accepted the trust so imposed upon them, duly qualified as such trustees and entered upon the discharge of their duties as such trustees; that thereafter, to-wit, on the fifth day of February, A. D. 1917, the said Emily Borie Ryerson and Edward L. Ryerson filed their bill in the Superior Court of Cook County, Illinois, presenting their resignation as Trustees of the Estate of Arthur Ryerson; that thereafter by decree of the said Superior Court of Cook County duly entered on the thirteenth

9 day of April, A. D. 1917, the resignation of said Emily Borie Ryerson and Edward L. Ryerson as Trustees of the Estate of Arthur Ryerson was accepted and the plaintiff herein, The Merchants' Loan & Trust Company, thereupon appointed Trustee of the Estate of said Arthur Ryerson; that pursuant to the direction of said decree and under the directions and suggestions of the Master in Chancery appointed by the court, the said Emily Borie Ryerson and Edward L. Ryerson did on the 29th day of June, 1917, transfer, assign and deliver to said The Merchants' Loan & Trust Company, as Trustee, all of the estate and property in their possession or control belonging to the Estate of Arthur Ryerson, deceased, and were thereupon discharged from their liabilities as said trustees; that the plaintiff thereupon duly qualified as such Trustee and has been since that time and is now acting in that capacity.

That at the date of his death the said Arthur Ryerson was the owner of twelve thousand six hundred ninety-six (12,696) shares of the preferred capital stock of Joseph T. Ryerson & Son, an Illinois corporation, of the par value of Twenty-five Dollars ($25) per share; that from that time until the second day of February 1917, said stock was continuously held as part of the principal of the Estate of Arthur Ryerson, deceased, in the hands of the Trustees of said Estate.

That thereafter, to-wit, on the second day of February, 1917, the then Trustees of the Estate of Arthur Ryerson, deceased, sold to Joseph T. Ryerson & Son, a corporation, nine thousand five hundred and twenty-two (9,522) shares of the preferred capital stock of Joseph T. Ryerson & Son so held by said Trustees and received in payment therefor the sum of One Million Two Hundred Eighty Thousand Nine Hundred Ninety-six Dollars and Sixty-four Cents ($1,280,996.64.)

10 That on March 1, 1913, the fair cash value of the nine thousand five hundred and twenty-two (9,522) shares of the preferred capital stock of Joseph T. Ryerson & Son, so held by the Estate of Arthur Ryerson, was fifty-nine Dollars ($59) per share or a total of Five Hundred Sixty-one Thousand Seven Hundred Ninety-eight Dollars ($561,798).

That from and after March 1, 1913, and until the date of the sale of said stock as aforesaid the fair cash value of said stock increased, as follows, to-wit: On January 1, 1914, the full fair cash value of said nine thousand five hundred and twenty-two (9,522) shares of stock was Sixty-seven Dollars ($67) per share, or a total of Six Hundred Thirty-seven Thousand Nine Hundred and Seventy-four Dollars ($637,974); on January 1, 1915, the full fair cash value of said Nine Thousand Five Hundred and twenty-two (9,522) shares of stock was Sixty-seven Dollars ($67) per share, or a total of Six Hundred Thirty-seven Thousand Nine Hundred and Seventy-four Dollars ($637,974); on January 1, 1916, the full fair cash value of said nine thousand five hundred and twenty-two (9,522) shares of stock was Seventy-five Dollars ($75) per share, or a total of Seven Hundred Fourteen Thousand One Hundred Fifty Dollars ($714,150); on January 1, 1917, the full fair cash value of said nine thousand five hundred and twenty-two (9,522) shares of stock was One Hundred Thirty-three Dollars and Seventy-five cents ($133.75) per share, or a total of One Million Two Hundred Sixty-three Thousand Five Hundred Sixty-seven Dollars and Fifty Cents ($1,263,567.50).

That on or about the eighth day of January, 1914, the Trustees of the Estate of Arthur Ryerson acquired ten (10) First Mortgage five per cent. bonds of the Cudahy Packing Company, of the aggregate face value of Ten Thousand Dollars ($10,000), and paid therefor the sum of Nine Thousand Nine Hundred Sixty-two
11 Dollars and Fifty Cents ($9,962.50), which was the fair cash value of said bonds at the date of said purchase.

That the bonds were thereafter continuously held by the Trustees as part of the principal of said estate, until, to-wit, the second day of May, 1917, when said bonds were surrendered to the maker thereof upon call duly made, and said Trustees received in payment therefor the total sum of Ten Thousand Two Hundred and Fifty Dollars ($10,250).

That the full proceeds of the sale of said capital stock of Joseph T. Ryerson & Son sold as aforesaid by the Trustees and the full proceeds arising from the redemption of the said first mortgage bonds of the Cudahy Packing Company were invested by said Trustees in other securities and pursuant to the directions specifically set forth in the will of said decedent were thenceforward and now are held intact as part of the principal of said trust estate created by the aforesaid will of Arthur Ryerson, deceased; that no part of said proceeds was, or has been disbursed by the Trustees as income to the life tenant under said will or to any other person.

That the said capital stock of Joseph T. Ryerson & Son belonging to the estate of Arthur Ryerson was sold as aforesaid by the Trustees of said Estate for the sole purpose of transferring the assets of said estate represented by the investment in said stock from an investment in a manufacturing business of fluctuating value and income return to the form of a permanent Trustees' investment; that neither said estate nor the plaintiff as Trustee thereof nor their predecessors

in trust or either of them as such Trustees were or are now engaged in the business of buying and selling securities.

That on or about the first day of April, 1918, in accordance with the provisions of the Income Tax Law, the plaintiff as said
12 Trustee aforesaid, filed its return of the income received by the Estate of Arthur Ryerson during the year of 1917; that acting in compliance with the regulations of the Treasury Department of the United States in that regard but under protest, it included in its income tax return so filed the sum of Seven Hundred Nineteen Thousand One Hundred Ninety-eight Dollars and Sixty-four Cents ($719,198.64) representing the excess of the sum received as the purchase price of said nine thousand five hundred and twenty-two (9,522) shares of the preferred capital stock of Joseph T. Ryerson & Son over the fair cash value of said shares as of March 1, 1913, and the sum of Two Hundred Eighty-seven Dollars and Fifty Cents ($287.50) representing the excess of the amount received in the redemption of said first mortgage bonds of Cudahy Packing Company over the purchase price thereof; that all of the statements made in the said income tax return by said Trustee were true and correct.

That on the face of its return so filed plaintiff gave notice of its claim that said sum, so entered under protest as income represented an appreciation in the value of the capital assets of said estate and was not income, and accompanied its return so made by a protest in writing against the assessment of any tax on said amount so received by it as said Trustee.

That on or about the same date, to-wit, the first day of April, 1918, and, accompanying its return of income so filed as aforesaid, the plaintiff as Trustee aforesaid filed its Return of Information showing the distribution of all income so received by it as Trustee aforesaid; that in said Return of Information the plaintiff under protest included in the income of said estate the profits from the sale of stocks and bonds as aforesaid; that said Return of information clearly set forth that no part of said profit had been distributed as income to the life tenant of said trust but had been added by said Trustee
13 to the principal of the trust estate.

That thereafter the Commissioner of Internal Revenue on or about April —, 1918, under the provisions of an Act of Congress in effect September 9, 1916, entitled, "An Act to Increase Revenue and for other purposes" as amended by the Act of Congress of March 3, 1917, entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the expenses of fortifications and other purposes," and as further amended by an Act of Congress in effect October 4, 1917, entitled "An Act to provide revenue to defray war expenses and for other purposes," assessed against the plaintiff an income tax for the year 1917 amounting to Three Hundred Eleven Thousand Two Hundred Forty-two Dollars and Fifty-one Cents ($311,242.51); and this plaintiff is informed and believes and therefore alleges that the said assessment was computed and made by said Commissioner upon the following basis and not otherwise:

That said Commissioner of Internal Revenue determined and held

that the apparent profit in money of Seven Hundred Nineteen Thousand One Hundred Ninety-eight Dollars and Fourteen Cents ($719,198.14) resulting from the sale of nine thousand five hundred and twenty-two (9,522) shares of stock of Joseph T. Ryerson & Son, and the apparent profit in money of Two Hundred Fifty-seven Dollars and Fifty Cents ($287.50) resulting from said redemption of said Cudahy bonds was taxable income of said estate.

That thereafter the defendant, acting as Collector of Internal Revenue for the First District of Illinois, under the provisions of an Act of Congress in effect September 9, 1916, entitled "An Act to Increase Revenue and for other purposes" as amended by the act of Congress of March 3, 1917, entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the
14 Army and Navy and the expenses of fortifications and other purposes," and as further amended by an Act of Congress in effect October 4, 1917, entitled "An Act to provide revenue to defray war expenses and for other purposes," demanded of the plaintiff the sum of Three Hundred Eleven Thousand Two Hundred Forty-two Dollars and Fifty-one Cents ($311,242.51) which defendant claimed to be due and payable by the plaintiff as trustee aforesaid as an income tax upon income received by the plaintiff as such Trustee during the year 1917. That said sum so demanded represented the income tax assessed upon the money received by plaintiff as part of the proceeds of the sale of said stock and redemption of bonds as aforesaid, i. e., the excess of the amount received for said stock over the fair cash value of said stock as of March 1, 1913, and the excess of the amount received for said bonds over their purchase price, which money was reinvested by the Trustee and remained undistributed in the hands of the plaintiff as part of the principal of said trust estate as hereinabove set forth.

That thereupon, to-wit, on the twentieth day of June, 1918, the plaintiff made and filed with the defendant herein, and with the said Commissioner of Internal Revenue, an application and appeal for the abatement of the said tax of Three Hundred Eleven Thousand Two Hundred Forty-two Dollars and Fifty-one Cents ($311,242.51) so assessed and demanded as aforesaid, in manner and form as provided in Section 3226 of the Revised Statutes of the United States, the provisions of law in that regard and the Regulations of the Secretary of the Treasury in pursuance of said law, which appeal and application was thereafter, to-wit, on the twenty-third day of November, 1918, rejected and denied by the Commissioner of Internal Revenue.

That thereupon the defendant acting as such Collector aforesaid and claiming to act pursuant to such statutes aforesaid again demanded payment of said tax of Three Hundred Eleven Thou-
15 sand Two Hundred Forty-two Dollars and Fifty-one Cents ($311,242.51).

That thereafter, to-wit, on the twelfth day of December, 1918, the plaintiff solely to avoid the imposition of interest and penalties visited for failure to pay said tax and to avoid persecution and distraint and sale of the property of said estate and under compulsion, duress and

coercion, paid to the said defendant the sum of Three Hundred Eleven Thousand Two Hundred Forty-two Dollars and Fifty-one Cents ($311,242.51) representing the tax as aforesaid, but said payment was made under protest; that at the same time the plaintiff protested in writing that no tax was due from it on such amounts received as aforesaid and that the defendant was without authority to exact and collect the same and that the plaintiff paid the same under protest and compulsion.

That thereafter, to-wit, on the nineteenth day of December, 1918, the plaintiff filed with the defendant herein, and the said Commissioner of Internal Revenue, its appeal and application for a refund of said sum of Three Hundred Eleven Thousand Two Hundred Forty-two Dollars and Fifty-one Cents ($311,242.51), so assessed and paid under protest, in manner and form as provided in Section 3226 of the Revised Statutes of the United States, the provisions of law in that regard and the Regulations of the Secretary of Treasury established in pursuance of said law, which said application and appeal was thereafter, to-wit, on the 11th day of March, 1919, rejected and denied by said Commissioner of Internal Revenue.

That as its conclusion of law and for the purpose of preserving its claim that a constitutional question is involved in this suit and of protecting its right to a direct appeal to the Supreme Court of the United States by reason thereof, in case said appeal shall be necessary, this plaintiff alleges that said Act of Congress under which said sum of Three Hundred Eleven Thousand Two Hundred
15 Forty-two Dollars and Fifty-one Cents ($311,242.51) was levied on said appreciation in value of the securities forming part of the principal of this trust estate, and its payment compelled, to-wit, Title I of an Act of Congress in effect September 9, 1916, entitled, "An Act to Increase the Revenue and for other purposes," as amended by the Act of Congress of March 3, 1917, entitled, "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the expenses of fortifications and for other purposes," and as further amended by an Act of Congress in effect October 4, 1917, entitled "An Act to provide revenue to defray war expenses and for other purposes," is invalid and void, and does not convey any lawful authority in so far as the same may be asserted to confer power to make such levy on such appreciation in money value of securities forming the principal of said trust estate or to compel such payment, and, in so far as they have attempted to convey such authorization, are in violation of Article I, Section 2, Clause 3 of the Constitution of the United States to the effect that "direct taxes shall be apportioned among the several states" and of Article I, Section 9, Clause 4 thereof to the effect that "no capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken"; that said appreciation in money value of said capital assets did not in whole or in part or proportion thereof constitute income, and was not subject to tax as income within the meaning of the Sixteenth Amendment to the said Constitution which provides that "Congress shall have the power to lay and collect taxes on income from whatever source de-

rived without apportionment among the several states and without regard to any census or enumeration," and this plaintiff hereby calls in question the constitutionality of said Acts of Congress and if all the provisions thereof assumed or asserted to authorize said levy and the enforcement thereof.

17 That this is a suit of a civil nature at common law arising under the constitution and laws of the United States and under the laws of the United States providing for Internal Revenue.

Wherefore the defendant became on, to-wit, the 12th day of December, 1918, indebted to the plaintiff in the sum of Three Hundred Eleven Thousand Two Hundred Forty-two Dollars and Fifty-one Cents ($311,242.51) for money received by the defendant from the plaintiff and held by the defendant to the use of the plaintiff and thereupon on the day last aforesaid the obligation arose upon a promise implied in law to pay said sum to the plaintiff with interest thereon at the legal rate on the part of the defendant, and said promise so arising by implication of law is the promise of the defendant now sued upon in this action.

Yet the defendant not regarding his said promises has not paid the said sum of money or any part thereof to the plaintiff but has wholly refused to the damage of the plaintiff of Five Hundred Thousand Dollars ($500,000), and, therefore, it brings this suit, etc.

FISHER, BOYDEN, KALES & BELL,
Attorneys for The Merchants' Loan and Trust Company, as Trustee of the Estate of Arthur Ryerson, Deceased.

(Endorsed:) Filed June 24, 1920. John H. R. Jamar, clerk.

18 [Endorsed:] General No. —. —— of ——. Fisher, Boyden, Kales & Bell, 134 S. La Salle Street, Chicago. Telephone Franklin 2325.

19 On the same day, to-wit: the 11th day of June, 1920, a Writ of Alias Summons issued out of the Clerk's office of said Court against said defendant in said above entitled cause, as prayed for in said Præcipe, which said writ with the return of the Marshal thereon endorsed is in the words and figures following, to-wit:

20 District Court of the United States of America, Northern District of Illinois, ss.

United States of America to the Marshal of the Northern District of Illinois, Greeting:

We again command you to summon Julius F. Smietanka, formerly United States Collector of Internal Revenue for the First District of the State of Illinois, if found in your district, to be and appear before our Judge of the District Court of the United States for the Northern District of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the District aforesaid, on the first Monday of

July next, to answer unto The Merchants' Loan & Trust Company, as Trustee of the Estate of Arthur Ryerson, deceased, of a plea of trespass on the case upon promises, to its damages, as it alleges, of Five hundred thousand ($500,000.00) Dollars, and have you then and there this Writ.

Witness, The Hon. Kenesaw M. Landis, Judge of the District Court of the United States of America, at Chicago aforesaid, this 11th day of June, in the year of our Lord one thousand nine hundred and 20 and of our Independence the 144th year.

[SEAL.] JOHN H. R. JAMAR,
Clerk.

(Endorsed on back:) No. 33297. Marshal's No. 15613. District Court of the United States, Northern District of Illinois. Merchants' Loan & Trust Co., as trustee, etc., vs. Julius F. Smietanka, collector, etc. Alias summons returnable July Term, A. D. 1920. John H. R. Jamar, clerk. Fisher, Boyden, Kales & Bell, attorney-. Filed June 17, 1920. John H. R. Jamar, clerk.

21 Endorsed on Back of Alias Summons.

I have executed this writ within my district in the following manner to wit: Upon Monica Kuffel Private Secretary of the within named Julius F. Smietanka by reading to and in her presence and hearing and at the same time giving her a copy of the same this 11th day of June *A. D. her a copy of the same on this 11th day June* A. D. 1920.

JOHN J. BRADLEY,
U. S. Marshal.
By THEO. PICKEN,
Deputy

21½ And on to-wit: the 25th day of June, 1920, came Charles F. Clyne, Attorney for Defendant, and filed in the Clerk's office of said Court, in said entitled cause, a certain Demurrer in words and figures following, to-wit:

22 In the District Court of the United States of America for the Northern District of Illinois Eastern Division.

No. 33297.

THE MERCHANT'S LOAN & TRUST COMPANY, as Trustee of the Estate of Arthur Ryerson, Deceased, Plaintiff,

v.

JULIUS F. SMIETANKA, Formerly United States Collector of Internal Revenue for the First District of the State of Illinois, Defendant.

Demurrer.

And the said Julius F. Smietanka, formerly Collector of Internal Revenue of the United States of America for the First District of Illinois, by Charles F. Clyne, United States Attorney for the Eastern Division, Northern District of Illinois, comes and defends the wrong and injury when, etc., and says that the said amended declaration and the matters therein contained in manner and form as above stated and set forth are not sufficient in law for the said plaintiff to have and maintain its aforesaid action thereof against him, the said defendant, and that he is not bound to answer the same, and this he is ready to verify.

Wherefore, for want of sufficient declaration in this behalf, the said Julius F. Smietanka, prays for judgment and that the said plaintiff may be barred from having or maintainin- its aforesaid action thereof against him, etc.

CHARLES F. CLYNE,
United States Attorney, Attorney for Defendant.

(Endorsed:) Filed Jun. 25, 1920. John H. R. Jamar, clerk.

23 And on to wit: the 22nd day of October, A. D. 1920, came Hon. George T. Page, Circuit Judge, and entered a judgment in said entitled cause, in words and figures following, to wit:

24

Judgment.

In the District Court of the United States, Northern District of Illinois, Eastern Division, Friday, October 22, A. D. 1920.

Present: Honorable George T. Page, circuit judge.

No. 33297.

THE MERCHANTS' LOAN AND TRUST COMPANY, as Trustee of the Estate of Arthur Ryerson, Deceased, Plaintiff,

vs.

JULIUS F. SMIETANKA, Formerly United States Collector of Internal Revenue for the First District of the State of Illinois, Defendant.

This cause having come on to be heard by this court at a stated term thereof on the demurrer of the defendant to the amended declaration of the plaintiff herein, and after arguments of counsel for the defendant in support of the said demurrer and of counsel for the plaintiff in opposition thereto, the court, being fully advised in the premises, doth find that said amended declaration and the matters and things therein contained are not sufficient in law to maintain the action of the plaintiff, and it is therefore

Ordered, that the said demurrer be and the same is hereby in all respects sustained; and the plaintiff having thereupon elected to abide and stand by its said amended declaration, it is

Ordered and adjudged that the plaintiff take nothing by its writ, and that said defendant go hence without day and do have and recover of the said plaintiff his costs as taxed, and have execution therefore.

GEO. T. PAGE,
Judge.

24½ And on to wit: the 22nd day of October, 1920, came Plaintiff's Attorneys and filed in the Clerk's office of said Court, in said entitled cause, a certain Petition for Writ of Error in words and figures following, to wit:

25 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 33297.

THE MERCHANTS' LOAN AND TRUST COMPANY, as Trustee of the Estate of Arthur Ryerson, Deceased, Plaintiff,

vs.

JULIUS F. SMIETANKA, Formerly United States Collector of Internal Revenue for the First District of the State of Illinois, Defendant.

Petition for Writ of Error.

To the Supreme Court of the United States:

The above named The Merchants' Loan and Trust Company, as Trustee of the Estate of Arthur Ryerson, deceased, now appears before this court and complains that in the record and proceedings had in this cause, and also in the rendition of the judgment in the above entitled cause in the District Court of the United States for the Northern District of Illinois, Eastern Division, on the 22nd day of October, 1920, manifest error hath happened to the great damage of said plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore the said plaintiff hereby prays for the allowance of a writ of error, for an order fixing the amount of the bond for a supersedeas in said cause, and for such other order and process as may cause the aforementioned errors and judgment to be corrected by the said Supreme Court of the United States.

Dated Chicago, Illinois, October 22, 1920.

FISHER, BOYDEN, KALES & BELL,
Plaintiff's Attorneys.

(Endorsed:) Filed Oct. 22, 1920. John H. R. Jamar, clerk.

25½ And on to wit: the 22nd day of October, 1920, came Plaintiff by its Attorneys and filed in the Clerk's office of said Court, in said entitled cause, a certain Assignment of Errors in words and figures following, to wit:

In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 33297.

THE MERCHANTS' LOAN AND TRUST COMPANY, as Trustee of the Estate of Arthur Ryerson, Deceased, Plaintiff.

vs.

JULIUS F. SMIETANKA, Formerly United States Collector of Internal Revenue for the First District of the State of Illinois, Defendant.

Assignment of Errors.

The plaintiff above named hereby assigns error to the record and proceedings and to the entry of the judgment in the above entitled cause, as follows:

1. The Court erred in sustaining the demurrer to the amended declaration and dismissing the suit.

2. The Court erred in holding that the tax alleged in the amended declaration was not in violation of Article I, Section 9 of the Constitution of the United States as a direct tax upon capital not made in proportion to the census or enumeration mentioned.

3. The Court erred in holding that the tax alleged in the amended declaration was not in violation of Article I, Section 2 of the Constitution of the United States as a direct tax not apportioned among the several states.

4. The Court erred in holding that the tax alleged in the amended declaration was a tax on income within the meaning of the Sixteenth Amendment to the Constitution of the United States.

27 5. The Court erred in holding that the tax alleged in the amended declaration was a tax on income within the meaning of the income tax law of September 8, 1916, as amended March 3, 1917, and October 4, 1917.

6. The Court erred in holding that any part of the price received from the sale of the shares and the redemption of the bonds in said amended declaration mentioned constituted taxable income to the plaintiff.

7. The Court erred in holding that the conversion into money of the shares of stock and redemption of the bonds in said amended declaration mentioned, resulted in taxable income.

8. The Court erred in holding that the conversion of the shares of stock in said amended declaration mentioned into money resulted in a taxable income in the year in which the conversion oc-

curred equal to the difference between the value of said stock on March 1, 1913, and the value on the day the conversion occurred.

9. The Court erred in holding that if the conversion of shares of stock into money in said amended declaration mentioned resulted in taxable income, the increase in value in each year should be assessed as taxable income in that year.

FISHER, BOYDEN, KALES & BELL,
Attorneys for Plaintiff.

(Endorsed:) Filed Oct. 22, 1920. John H. R. Jamar, Clerk.

28 And on to-wit: the 22nd day of October, 1920, came the Plaintiff as principal, and John E. Blunt, Jr., as surety, and filed in the Clerk's Office of said Court, in said entitled cause, a certain Bond on Writ of Error in words and figures following, to-wit:

29 In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 33297

THE MERCHANTS' LOAN AND TRUST COMPANY, as Trustee of the Estate of Arthur Ryerson, Deceased, Plaintiff.

vs.

JULIUS F. SMIETANKA, Formerly United States Collector of Internal Revenue for the First District of the State of Illinois, Defendant.

Bond.

Know all men by these presents that we, The Merchants' Loan and Trust Company, a corporation of the State of Illinois, Trustee of the Estate of Arthur Ryerson, deceased, as principal, and John E. Blunt, Jr., as surety, are held and firmly bound unto the above named Julius F. Smietanka, formerly United States Collector of Internal Revenue for the First District of the State of Illinois in the sum of Two Hundred and Fifty ($250.00) Dollars, for the payment of which sum, well and truly to be made, we, the said principal and the said surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22nd day of October, 1920.

The condition of this obligation is such that, whereas, the above bounden The Merchants' Loan and Trust Company as Trustee of the Estate of Arthur Ryerson, deceased, has prosecuted a writ of error to the Supreme Court of the United States to reverse the final judgment rendered in the above entitled cause by the District
30 Court of the United States in and for the Northern District of Illinois, Eastern Division; now, therefore, if said The

Merchants' Loan and Trust Company as Trustee of the Estate of Arthur Ryerson, deceased, shall prosecute said writ to effect and shall answer all damages and costs which the said Supreme Court of the United States shall adjudge against it in case the said judgment shall be affirmed, then this obligation shall be void, otherwise, to remain in full force and effect.

[SEAL.] THE MERCHANTS' LOAN AND TRUST COMPANY,
Trustee of the Estate of Arthur Ryerson, Deceased.
By E. D. HULBERT,
President.

Attest:
LEON L. LOEHR,
Secretary.

JOHN E. BLUNT, Jr. [SEAL.]

STATE OF ILLINOIS,
County of Cook, ss:

I, R. R. Covello, a notary Public in and for said County, in the State aforesaid, do hereby certify that E. D. Hulbert and Leon L. Loehr personally known to me to be the President and the Secretary respectively of The Merchants' Loan and Trust Company, an Illinois corporation, appeared before me this day in person and acknowledged that they signed, sealed and delivered the foregoing instrument as their free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal this 8th day of October, A. D. 1920.

[SEAL.] R. R. COVELLO,
Notary Public.

Bond approved Oct. 22, 1920.
PAGE.

31 STATE OF ILLINOIS,
County of Cook, ss:

I, Alexander Beattie, a Notary Public, in and for said County and State, do hereby certify that John E. Blunt, Jr., personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal this 14th day of October, A. D. 1920.

[SEAL.] ALEXANDER BEATTIE,
Notary Public.

My Commission expires December 19, 1923.

(Endorsed:) Filed Oct. 22, 1920. John H. R. Jamar, Clerk.

32 And on to-wit the 22nd day of October, 1920, came Hon. George T. Page, Circuit Judge, and entered an order allowing writ of error in above entitled cause, in words and figures following, to-wit:

33 In the District Court of the United States, Northern District of Illinois, Eastern Division, Friday, October 22, A. D. 1920.

Present: Honorable George T. Page, Circuit Judge.

No. 33297.

THE MERCHANTS' LOAN AND TRUST COMPANY, as Trustee of the Estate of Arthur Eyerson, Deceased, Plaintiff, ..

vs.

JULIUS F. SMIETANKA, Formerly United States Collector of Internal Revenue for the First District of the State of Illinois, Defendant.

Order Allowing Writ of Error.

This cause coming on to be heard at a stated term of said court, and it appearing that the above named plaintiff, The Merchants' Loan and Trust Company, as Trustee of the Estate of Arthur Eyerson, deceased, has filed a petition for a writ of error and an assignment of errors in the above entitled cause, and has also filed a bond in the sum of Two Hundred and Fifty ($250) Dollars, and the said bond having been fully approved by the Court, it is therefore

Ordered that a writ of error be and the same is hereby allowed to have reviewed in the Supreme Court of the United States the record and proceedings and the judgment heretofore and on the 22nd day of October, 1920, rendered by this court in said cause; and it is further

Ordered that said bond shall operate as a supersedeas bond.

GEO. T. PAGE,
United States Circuit Judge.

34 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between The Merchants' Loan & Trust Company, as Trustee of the Estate of Arthur Eyerson, deceased, and Julius F. Smietanka, formerly United States Collector of Internal Revenue for the First District of the State of Illinois, a manifest error hath happened, to the great damage of the said The Merchants'

Loan & Trust Company, as Trustee of the Estate of Arthur Ryerson, deceased, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 22nd day of October, in the year of our Lord one thousand nine hundred and 20.

[Seal of the Dist. Court U. S., Northern Dist. Illinois, 1855.]

JOHN H. R. JAMAR,
Clerk of the District Court of the United States for the Northern Dist. of Illinois.

Allowed by
GEORGE T. PAGE, *Judge.*

[Endorsed:] Supreme Court of the United States. The Merchants' Loan & Trust Company, as trustee, etc., vs. Julius F. Smietanka, formerly U. S. Coll. of Int. Rev. Writ of error. Copy deposited for the defendant in error in the Clerk's Office, U. S. District Court, Northern District of Illinois.

35 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Julius F. Smietanka, formerly United States Collector of Internal Revenue for the First District of the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein The Merchants' Loan and Trust Company, as Trustee of the Estate of Arthur Ryerson, deceased, is plaintiff in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George T. Page, Judge of the District Court of the United States, this 22 day of October, in the year of our Lord one thousand nine hundred and twenty.

GEO. T. PAGE,
Judge.

36 [Endorsed:] No. 33297. Supreme Court of the United States. The Merchants' Loan and Trust Company, trustee of the estate of Arthur Ryerson, deceased, plaintiff in error, vs. Julius F. Smietanka, formerly United States collector of internal revenue for the first district of Illinois, defendant in error. Citation to the Supreme Court of the United States. Filed Oct. 22, 1920, at — o'clock — m. John H. R. Jamar, clerk.

STATE OF ILLINOIS,
County of Cook, ss:

On this 22d day of October, in the year of our Lord one thousand nine hundred and twenty, personally appeared before me, the subscriber, William K. Otis and makes oath that he delivered a true copy of the within citation to the defendant in error, Julius F. Smietanka, formerly United States Collector of Internal Revenue for the First District of the State of Illinois.

WILLIAM K. OTIS.

Sworn to and subscribed the Twenty-second day of October, A. D. 1920.

[Seal of Elmer Monsen, Notary Public, Cook County, Ill.]

ELMER MONSEN,
Notary Public.

Received a copy of the within citation this — day of October, A. D. 1920.

____ ____,
Attorney for Defendant in Error.

36½ And on to-wit the 22nd day of October, 1920, came Plaintiff by its attorneys and filed in the Clerk's office of said Court, in said entitled cause, a certain Præcipe in words and figures following, to-wit:

37 In the District Court of the United Statees, Northern District of Illinois, Eastern Division.

No. 33297.

THE MERCHANTS' LOAN AND TRUST COMPANY, Trustee of the Estate of Arthur Ryerson, Deceased,

vs.

JULIUS F. SMIETANKA, Formerly United States Collector of Internal Revenue for the First District of the State of Illinois.

Præcipe for Record.

To the Clerk of United States District Court,
Northern District of Illinois,
Eastern Division:

You will please prepare transcript of proceedings in the above entitled cause, and incorporate therein the following:

1. Amended declaration filed June 24, 1920.
2. Alias summons issued June 11, 1920.
3. Demurrer to amended declaration filed June 25, 1920.
4. Judgment entered October 22, 1920.
5. Petition for writ of error filed October 22, 1920.
6. Assignment of errors filed October 22, 1920.
7. Bond on writ of error filed October 22, 1920.
8. Order allowing writ of error entered October 22, 1920.
9. Writ of error issued October 22, 1920.
10. Citation and service thereof filed October 22, 1920.

Dated October 22, 1920.

FISHER, BOYDEN, KALES & BELL,
Plaintiff's Attorneys.

(Endorsed:) Filed Oct. 22, 1920. John H. R. Jamar, clerk.

38 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this

Court in the cause entitled The Merchants' Loan & Trust Company, as Trustee of the Estate of Arthur Ryerson, deceased vs. Julius F. Smietanka, formerly United States Collector of Internal Revenue for the First District of the State of Illinois, as the same appear from the original records and files thereof, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 27th day of October A. D. 1920.

[Seal of the Dist. Court U. S., Northern Dist. Illinois, 1855.]

JOHN H. R. JAMAR,
Clerk.

Endorsed on cover: File No. 27,965. N. Illinois D. C. U. S. Term No. 608. The Merchants' Loan & Trust Company, as trustee of the estate of Arthur Ryerson, deceased, plaintiff in error, vs. Julius F. Smietanka, formerly United States collector of internal revenue for the first district of the State of Illinois. Filed November 6th, 1920. File No. 27,965.